

1 DAVID C. WEISS
Special Counsel
2 LEO J. WISE
Principal Senior Assistant Special Counsel
3 DEREK E. HINES
Senior Assistant Special Counsel
4 SEAN F. MULRYNE
CHRISTOPHER M. RIGALI
5 Assistant Special Counsels
950 Pennsylvania Avenue NW, Room B-200
6 Washington, D.C. 20530
Telephone: (771) 217-6090
7 E-mail: LJW@usdoj.gov, DEH@usdoj.gov
E-mail: SFM@usdoj.gov; CMR@usdoj.gov
8 Attorneys for the United States

9 Attorneys for Plaintiff
10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 ALEXANDER SMIRNOV,
17 Defendant.

No. CR 2:24-cr-00091-ODW

UNOPPOSED EX PARTE APPLICATION
TO FILE SUR-REPLY IN OPPOSITION
TO DEFENDANT'S MOTION TO
DISQUALIFY THE SPECIAL COUNSEL
AND DISMISS THE INDICTMENT IN
THIS CASE

Hearing Date: August 26, 2024
Hearing Time: 11:30 a.m.
Location: Courtroom of the Hon.
Otis D. Wright II

22 The United States, by and through its counsel of record, hereby files this unopposed
23 ex parte application for an order permitting the government to file a sur-reply in opposition
24 to the defendant's motion to disqualify the Special Counsel and dismiss the indictment in
25 this case, ECF 93. The defendant filed his motion on July 15, 2024, and the government
26 filed a response in opposition on August 5, 2024, ECF 99. On August 9, 2024, the
27 defendant filed a reply in support of his motion, in which he raised a new argument that

28 UNITED STATES' UNOPPOSED EX PARTE APPLICATION TO FILE SUR-REPLY

CASE No. 2:24-CR-00091-ODW

1 he had not included in his motion. ECF 102. Specifically, the defendant argued for the first
2 time in his reply brief that the indictment in this case exceeds the scope of Special Counsel
3 Weiss's Appointment Order. *Id.* at 1-5.

4 The government seeks leave to file a short sur-reply to address this argument. *See*
5 Local Rule 7-10. "A decision to grant or deny leave to file a sur-reply is generally
6 committed to the sound discretion of the court." *Tounget v. Valley-Wide Recreation &*
7 *Park Dist.*, No. EDCV 16-88-JGB, 2020 WL 8410456, at *2 (C.D. Cal. Feb. 20, 2020).
8 "Good cause to permit a party to file a sur-reply may exist where," as here, "the movant
9 raises new arguments in its reply brief." *McGechie v. Atomos Ltd.*, No. 2:22-CV-01812-
10 DJC-DB, 2023 WL 2918681, at *1 (E.D. Cal. Apr. 12, 2023) (citation omitted). Because
11 the defendant raised the argument regarding the scope of the Appointment Order for the
12 first time in his reply brief, the government has not yet had the opportunity to respond to
13 it. Granting the government leave to file the sur-reply would benefit the Court's review of
14 the defendant's motion by allowing the government to fully address all of the issues raised
15 by the defendant.

16 The government's application is based on the attached declaration of Senior
17 Assistant Special Counsel Derek E. Hines. Pursuant to Local Rule 17-19, on August 14,
18 2024, government counsel informed the defendant that it intended to file this ex parte
19 application seeking leave to file a sur-reply and requested the defense's position. Defense
20 counsel stated, "We do not oppose you filing a Surreply, provided that you inform the
21 Court that we do not agree with your rationale for the need to file a surreply."

22 Accordingly, the Court should grant the government leave to file its sur-reply.
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1 Dated: August 14, 2024

Respectfully submitted,

2 DAVID C. WEISS
3 Special Counsel

4 /s/

5 LEO J. WISE
6 Principal Senior Assistant Special Counsel

7 DEREK E. HINES
8 Senior Assistant Special Counsel

9 SEAN F. MULRYNE
10 CHRISTOPHER M. RIGALI
11 Assistant Special Counsels

12 United States Department of Justice

DECLARATION OF DEREK E. HINES

I, Derek E. Hines, declare as follows:

1. I am Senior Assistant Special Counsel, and I represent the government in *United States of America v. Alexander Smirnov*, No. CR 2:24-cr-00091-ODW.

2. I make this declaration in support of the government's ex parte application for an order permitting the government to file a sur-reply in opposition to the defendant's motion to disqualify the Special Counsel and dismiss the indictment in this case, ECF 93.

3. For the first time in his reply brief, the defendant raised a new argument about Special Counsel Weiss's appointment, contending that this prosecution exceeds the scope of his Appointment Order. ECF 102 at 1-5.

4. Because this argument was raised for the first time in reply, the government has not yet had the opportunity to respond to it. Granting the government leave to file the sur-reply would benefit the Court's review of the defendant's motion by allowing the government to fully address all of the issues raised by the defendant.

5. On August 14, 2024, I contacted defense counsel regarding the defendant's position on the government's ex parte application for leave to file a sur-reply. *See* Local Rule 17-19. Defense counsel stated, "We do not oppose you filing a Surreply, provided that you inform the Court that we do not agree with your rationale for the need to file a surreply."

6. A true and correct copy of that email is attached hereto as **Exhibit 1**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 14th day of August, 2024, in the Commonwealth of Pennsylvania.

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/s/

DEREK E. HINES

Senior Assistant Special Counsel